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 Fiduciary of Employers Mutual Plans

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**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA**

CV-N-03-0119-HDM-VPC

Thomas A. Dillon, Independent Fiduciary
 of Employers Mutual Plans,

Plaintiff,

v.

✓ James Lee Graf; William R. Kokott;
 ✓ Nicholas E. Angelos; Kari Hanson; Agent
 Coalition of America, Inc.; Associated
 Agents of America, Inc.; Michael E.
DeBello; Nathan Foreman; American
 Benefit Society, Inc.; Christopher S.
 Ashiotes; Sierra Administration Marketing,
 Inc.; Reggie Caillouet dba Reggie Caillouet
 Brokerage; AAA Insurance Services; ADR
 Insurance Services, Inc.; Advanced
 Marketing; Affordable Insurance Options;
 AFM Insurance Group; Humayun Bashir
 Afzal; Timothy Alder; Michael Alexander;
 All Florida Insurance Services Inc; Alliance
 for Affordable Health; John Amann;
 American Coalition of Consumers, L.L.C.;
 Thomas Armstrong; John Kadlec Arnold; R.
 A. Ashworth; Association Benefits
 Solution, Inc.; AXA Advisors, LLC; Julie
 Baker; Karen Barber; Daniel Barnett;
 Barnhart & Associates; Willard Gene
 Barnhart; James Barnhill; Shirley Barton;
 Gary Allen Bastie; Harold Jose Batista;

COMPLAINT FOR:

1. **CIVIL RICO;**
2. **RICO CONSPIRACY**
3. **FRAUD**
4. **BREACH OF CONTRACT TO
 PROCURE VALID
 INSURANCE;**
5. **INSURANCE PRODUCER
 MALPRACTICE**
6. **BREACH OF WARRANTY OF
 AUTHORITY**

JURY DEMAND

1 Frederick Bauer; John Been; Benson,
2 Young, and Downs Ins. Inc.; Ivan
3 Bentauin; Bart Berretta; Steven Blackford;
4 Dirk Blankenship; Stephen Blust; Peter
5 Bogutzki; Richard Bokofsky; Jan Booth-
6 Smith; Richard Brantley; William Brewer;
7 Steven Brown; Brown-Gainer & Associates;
8 Brown-Gainer, Inc.; Bruce W. Fletcher Co.,
9 Inc.; Carrie Bryant; Dennis Burden; Burkett
10 & Asso. Ins. & Fin. Svs Inc; James Burkett;
11 Debra Burton; E. Bruce Bushong; Gae
12 Callaway; Capital Financial Group, Inc;
13 Caputo Insurance Agency, Inc.; Richard
14 Caputo; Robert Carlin; Steven Carlson;
15 Todd Carmack; Donald Carroll; CBS Ins
16 and Plan Services; Kevin Cerulli; Donald
17 Chapman; Chesney Insurance Agency;
18 Larry Chesney; Antone Chomenko;
19 Leonard Cifrese; Anneliese Clark; Dean
20 Clark; Brian Clothier; Russell Coats;
21 Colella Financial Services, Inc.; James
22 Colella; Thomas Coleman; Complete
23 Financial Service; Jeffrey Conley; Patrice
24 Connolly; Robert Corallo; Connie Countie;
25 Elda Cox; Kurt C. Cradic; Dion R. Cruz;
26 CSS Inc.
27 Customer Service Solutions, Inc.; Brandy
28 Cumming; James Darby; Earl Grant
Darbyson; David E. Silva Insurance
Agency, Inc.; William Davidson; Jean F.
Davis; Kelly Davis; Mark Davis; Samuel
Day; Joseph Debrell; Tammi Desideri;
Maria Diaz; Joseph Dibrell; Kenneth
Dinklage; Charles DiPrimio; Anthony
DiRienzo; Wilford Dogan; James Doyle;
David Dudics; Julian Dwyer; Earl J.
Venable & Associates; Kent Edwards;
James Ehrhart; Hector Elizondo, Jr.; John
Elmore; John Emerick; Employee Benefit
Service; Moses Enwerekove; Fredrick
Epperson; Escambia Insurance; Estates
Solutions, Inc. dba: Benefit & Estates
Solutions; Eddie Ette; Brent Euler;
Executive & Employee Benefits, Inc.;
Express Florida Health and Life Ins;
F.A.I.A. Service Corp; Vito Falco; Michael
Farley; Thomas Felaki; John Feliciano; Roy
Fenner; Robert Fenton; Five Star
Marketing; Five Star Marketing Group;
John Flanagan; Linda Fleetwood;
Fleetwood-Franz 'Ee Benefits, Inc.;
Kenneth Fleming II; Bruce Fletcher; Gale
Follett; For Your Benefits, Inc.; Harnid
Foroudi; Charles Francis; Larry Fussell;

1 Gaetani Associates; Frances Gaetani;
 2 Michael Gainer; Ronald Garner; Paula
 3 Garst; J. Christopher Gauss; Robert Gill;
 4 Leslie Glazier; GMI Financial Group, Inc.;
 5 Richard Goodman; Susan Gordon;
 6 Elizabeth Gore; Lillian Gore; Richard
 7 Gorfido; Nancy Graham; James R. Grant;
 8 Gary Gravely; Darlene Graves; Mark
 9 (Breck) Greene; JoAnn Gullledge; David
 10 Haas; Haas Insurance Service; Andy
 11 Haase; Michael Hall; Robert E. Hall;
 12 Halsey Insurance Agency; Lee Hampton;
 13 Hancor Insurance Agency; George
 14 Hannigan; Roy Hanson; Cyd Hargrove; R.
 15 J. Hasselmier; Health Plans of Texas; John
 16 Helvie; Kathryn Hendrix; Gerald Higgins;
 17 Thomas E. Higgins; Hilcher Ins. &
 18 Financial Services; C. Wayne Hilcher,
 19 LUTCF; David Hines; Roger F. Holt, Jr;
 20 James Hopgood; Richard Horch; Horizon
 21 Insurance Associates, Inc.; Edward
 22 Hubbard; Hubbard Insurance; Hudson
 23 Eldridge Insurance Agency; David Scott
 24 Hughes; Wesley James Hunt; Robert Hurt;
 25 I. C. Brokerage, Inc.dba Insurance Center;
 26 Gerald Ide; Jenny Ide; Insurance Concepts
 27 of Texas; Insurance Marketing Group of
 28 Florida, Inc.; InsurCare, Inc.; InsurCare,
 Inc.; Anthony Iacono; Donna Iverson; J.
 Christopher Gauss, Inc.; Donald Jacoby;
 JFM Insurance Inc.; John Johnson; Michael
 Johnson; Brian Jones; Levern Jordan; Keith
 Jordano; John Kaiser; Eric Kantor; Bruce
 Kashick; Mal Kelly; Kettler & Associates,
 Inc.; Fredrick Kettler; Edgar Kieschnick;
 Cecil Knight; Michael Kolacz; Robert
 Kotman; Richard Kozar; Hilbert Kritch;
 James Kruckemeyer; Richard Kwong; Sally
 Lane; James Lang; Paul Laroussini; Mitch
 Laughton; Dennis Law; John LeFavour;
 June Lempke; Gal Lev-Lehman; Walter
 Lightfoot; James Lilly; Harvey Litvin;
 William Michael Lovell; Stephen Lukacs;
 Michelle Magidson; Fredrick Magiera;
 Mainstream Insurance; Gary Maxie; Brian
 McAllister; Andrew McCoy; Bruce
 McKinney; David McNamara; McNulty
 Barber Consulting; Vence Meneely; Gary
 Miano; Robert John Middleton; Midwest
 Marketing Insurance Agency; Mike
 Williams Ins. Ltd.; Mark Miller; Mills
 Cumming & Assoc, Inc.; Jeffrey Milrad;
 Lawrence Montgomery; Robert Morgan;
 Wayne Morris; Wayne Morriss; Robert

1 Mullinax; William Murphy; Harrison
2 Myers; Nassau Bay Agency, Inc;
3 Nationwide Insurance; Michael Newby;
4 Donald Alan Nicholson; Ernest Norman;
5 Norwell and Norwell; Rhonda O'Banion;
6 Gary Oliver; Olympic Mountain Agency;
7 Gerald Owens; Page Inc.; Kay Page;
8 Matthew Palmer; Edward Parodi; William
9 H. Patterson; Toni Paxton; D. Jean Payne;
10 Sherri Perri; David William Perry; Petra
11 Insurance Agency, Inc.; William Phillips;
12 Steven Pickett; Marc Pieroni; Fredrick
13 (Rick) Pike; Pike Insurance Agency, Inc.;
14 Susan Pine; Brent Pinkerton; Raymond
15 Pinto; David Eli Polovina; Michael Porter;
16 Cameron Pouncey; Preferred Care, Inc.;
17 Premier Marketing Group; Stanley Putman;
18 Quik Quote Insurance Brokers, Inc.; R. B.
19 Insur., Assoc., Inc.; Arif Rahim; Lawrence
20 Ramers; Ray Wall & Associates, Inc.; Mark
21 Reaves; Robert J. Reid; Reliable Insurance;
22 Thomas Reynolds; Rick Horch Annuities
23 and Ins.; Albert Riehl; Michael Roberts;
24 Rocky Financial Services / aka: Ace
25 Financial Services; Nathan Rogers; Sheila
26 Rooney; Scott Rose; Kenneth Rosicka; RTI
27 Insurance Services of FL, Inc.; Jesse Rubio;
28 Bobby Rundle; Barry Rusche; Scott
Rutherford; Ryko Corp, Inc.; Steven Sacks;
SafeComp; Catherine Sams; Susan
Schilling; Craig Schoen; Dennis Schrecker;
Robert Schwab; Selwin Schwartz; S. Lewis
Shafik; Edward (Brack) Shaver; Fredrick
Shealy; Sheila W. Rooney Agency;
Howard Siegel; David E. Silva; Clyde
Sinyard; Don R. Smith; John Snape;
Audrey Snow; Gerald Solomon; Dennis
Stanhoff; Starling & Associates, L.L.C.;
William F. Starling; Stetson-Beemer, Ins;
Donna Stilwell-Kronick; Stockman's
Insurance; Robert Stone; Penelope Stump;
Sullivan & Associates, Inc.; John Sullivan;
Timothy Sullivan; Summit Group Benefits,
Inc.; James Swafford; Porter Talbot;
Richard Tani; Nicholas Taromina; Texas
Ins. and Financial Svcs., Inc; The Blackford
Group; The Darbyson Group; The
Insurance Center; The Laughton Company;
Scott Thiltgen; Thompson Associates, Inc.;
James Thompson; Kyle Thompson; Terence
Thoruton; Tobin Ins. Agency, Inc.; James
Tobin; Stewart Turnage; James Tuten;
Ronald Unfried; Deborah Usher; USI
Insurance Services Corp.; Sebastian Valera;

1 Vantage Insurance Agency of NV; Earl
2 Venable; Roy Vicencio; Voluntary Benefit
3 Specialists; Gene Wadell; Wadell
4 Insurance Group; Raymond Wall; Gary
5 Ward; John Wathen; Richard Waugaman;
6 Brian Weaver; Eric Westall; Harry Wilk, III;
7 Bernard Williams; George Michael
8 Williams; Karel Anne Williamson; WIN;
9 Windsor Benefit Consultants, Inc.; Wolfco,
10 Inc.; Carmen Wolfe; Worldwide Ins.
11 Group, Inc.; Worldwide Insurance
12 Services, Inc.; John Wuthnow; Angie
13 Yanda; Leon Yannaroudis; Adrian
14 Zangirolarli;

15
16 Defendants.

TABLE OF CONTENTS

1		
2		
3	I	NATURE OF THE ACTION 1
4	II	JURISDICTION AND VENUE 2
5	III	PARTIES 3
6	A.	Plaintiff 3
7	B.	Defendants 3
8	i	The RICO Defendants 3
9	ii	The Negligent Defendant Wholesale Insurance Producers 5
10	iii	The Negligent Defendant Retail Insurance Producers 7
11	IV	AGENCY AND INFORMATION ALLEGATIONS 8
12	V	GENERAL FACTUAL ALLEGATIONS 9
13	A.	The Scheme of the RICO Enterprise 9
14	B.	The Predicate Acts of the RICO Defendants in
15		Furtherance of the Ongoing Scheme 18
16	C.	The Negligent Acts and Omissions of the
17		Defendant Insurance Producers 19
18	VI	FIRST CLAIM FOR RELIEF, 18 U.S.C. §1962(c) – Civil RICO
19		Against the RICO Defendants 23
20	A.	The Fraudulent Scheme 23
21	B.	The Enterprise 24
22	C.	Pattern of Racketeering Activity 24
23	VII	SECOND CLAIM FOR RELIEF, 18 U.S.C. §1962(d) – Conspiracy
24		to Commit Civil RICO Against the RICO Defendants 25
25	VIII	THIRD CLAIM FOR RELIEF, Fraud Against the RICO Defendants 26
26	IX	FOURTH CLAIM FOR RELIEF, Breach of Contract to
27		Procure Valid Insurance Against the Defendant Wholesale
28		and Retail Insurance Producers 27

1	X	FIFTH CLAIM FOR RELIEF , Professional Malpractice Against	
2		the Defendant Wholesale Insurance Producers and Retail	
3		Insurance Producers	28
4	XI	SIXTH CLAIM FOR RELIEF , Breach of Warranty of Authority	
5		Against RICO Defendants, Wholesale Insurance Producers and	
6		Defendant Retail Insurance Producers	30
7	XII	PRAYER FOR RELIEF	31
8		A. As to the RICO Claims	31
9		B. As to All Other Applicable Claims For Relief	31
10		DEMAND FOR JURY TRIAL	33

11
12
13
14
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1 Plaintiff Thomas A. Dillon, as the Court Appointed Independent Fiduciary of the
2 Employers Mutual Plans alleges against the defendants as follows:

3 I

4 **NATURE OF THE ACTION**

5 1. Approximately 7,000+ employers throughout the United States established
6 individual Employee Welfare Benefit Plans ("EWBPs") for their respective employees by
7 establishing or maintaining programs for the purpose of providing medical, surgical,
8 prescription drug and hospital care benefits to their employees and the dependents of their
9 employees (hereinafter "Participants"). Plaintiff Thomas A. Dillon has been appointed the
10 Independent Fiduciary of these 7,000+ EWBPs (sometimes hereinafter referred to as the
11 "Employers Mutual Plans" or the "EWBPs") because, in part, the medical insurance they paid
12 for turned out to be fraudulent and claims payable pursuant to the individual plans remain
13 unpaid.

14 2. The Employers Mutual Plans were created by the employers when they agreed to
15 purchase or participate in the purchase of health insurance for the benefit of the participants.
16 To accomplish this task, the EWBPs attempted to purchase health insurance offered for sale
17 by the RICO Defendants identified herein. Instead of purchasing real health insurance as
18 represented by the RICO Defendants, the 7,000+ Employers Mutual Plans purchased the
19 facade of insurance and had their premiums stolen or embezzled by the RICO Defendants
20 pursuant to the plan of the RICO enterprise.

21 3. The RICO Defendants defrauded the 7,000+ Employers Mutual Plans by falsely
22 representing to them that in exchange for over \$15,000,000 in premiums, paid on a monthly
23 basis to the RICO Defendants from January 2001 through to the end of January 2002, the
24 Employers Mutual Plans would be purchasing health insurance for their corresponding
25 participants issued by various licensed insurers. However, no licensed insurers agreed to
26 provide health insurance to the participants of the 7,000+ Employers Mutual Plans as
27 promised by the RICO Defendants, which resulted in the 30,000 participants incurring
28 approximately \$50,000,000 in health care and prescription drug claims payable pursuant to

1 the promised policies which remain unpaid. The fraudulent health insurance was sold to the
 2 7,000+ Employers Mutual Plans by approximately 400 Insurance Producers, who have been
 3 sued herein for malpractice, breach of contract to procure valid insurance and breach of their
 4 warranty of authority as agents of the alleged admitted carriers.

5 4. The 400 Defendant Insurance Producers committed malpractice and breached
 6 their respective contracts to provide valid insurance by, among other things: (i) failing to
 7 confirm that the licensed insurers had, in fact, granted the RICO Defendants the authority to
 8 bind coverage; (ii) failing to confirm that the licensed insurers had, in fact, agreed to insure the
 9 7,000+ Employers Mutual Plans; and (iii) failing to investigate the legitimacy of the facade of
 10 health insurance offered for sale by the RICO Defendants.

11 II

12 JURISDICTION AND VENUE

13 5. This Court has jurisdiction pursuant to the Racketeer Influenced and Corrupt
 14 Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, specifically, 18 U.S.C. § 1964(c); 28
 15 U.S.C. § 1331; and Supplemental Jurisdiction pursuant to 28 U.S.C. § 1367 (a) because the
 16 state court claims are so factually related to the RICO claims that they form part of the same
 17 case or controversy.

18 6. Venue is properly laid in this District under 28 U.S.C. § 1391(b) because several
 19 defendants, including Defendant Sierra Administration Marketing, Inc. may be found in this
 20 District, and because a substantial part of the events giving rise to the claims brought against
 21 all of the defendants occurred in this District. Examples of these events include, among many:
 22 (i) the RICO Defendants' corporate entities used to effectuate the fraud were incorporated and
 23 had their represented principal places of business in this District; (ii) the participants, as a
 24 precondition to obtaining the alleged health insurance, were required to join one of 16
 25 Associations located in this District; (iii) the contracts between the Defendant Insurance
 26 Producers and the RICO Defendants provided that in exchange for a commission, the
 27 Insurance Producers were required to solicit participants to become members of one of the
 28 16 Associations located in this District; (iv) the Associations calculated and paid the

1 commissions to the Insurance Producers from premiums paid into this District; (v) premiums
 2 were made payable to the Associations located in this District and were mailed to this District;
 3 (vi) medical insurance claims were adjudicated in this District and (vii) some medical
 4 insurance claims were paid from this District.

5 III

6 PARTIES

7 A. Plaintiff

8 7. Plaintiff Thomas A. Dillon ("Dillon") is a resident of California. On February 1,
 9 2002, Federal District Judge David W. Hagen granted a request for a Preliminary Injunction
 10 filed by Elaine Chao, the Secretary of the United States Department of Labor, which Order
 11 reconfirmed the December 13, 2001 appointment of Dillon as the Independent Fiduciary of
 12 the approximate 7,000+ Employers Mutual Plans created by the individual employers for the
 13 purpose of providing prescription drug, medical, surgical and hospital care benefits to their
 14 participants. Plaintiff has been granted plenary authority to collect, marshal and administer
 15 the assets of the 7,000+ Employers Mutual Plans, including the power to pursue all legitimate
 16 claims of the 7,000+ Employers Mutual Plans against culpable third parties, including those
 17 identified in this Complaint. This action is brought pursuant to and in accordance with the
 18 District Court's Order of February 1, 2002. This action is brought by Dillon for the benefit of
 19 the 7,000+ EWBP's, excluding any defendants who themselves may have purchased the
 20 subject insurance.

21 B. Defendants

22 i. The RICO Defendants

23 8. Defendant James Graf ("Graf"), a resident of California, was the alter ego of various
 24 corporate entities incorporated in the good State of Nevada and operated by Graf for the sole
 25 and exclusive purpose of stealing premiums paid by the 7,000+ Employers Mutual Plans for
 26 health insurance. Corporate entities used by Graf for his individual advantage and gain
 27 included: Employers Mutual LLC; Colombia Health Network, Inc.; Western Health Network,

28 ///

1 Inc.; WRK Investments, Inc.; Graf Investments, Inc. and Graf's 16 Nevada Associations.¹ The
 2 corporate entities operated by Graf were adversely dominated by Graf and
 3 other wrongdoers who never represented the interests of the corporate entities but rather
 4 looted the assets deposited into their accounts for their own individual advantage and gain.
 5 The corporate entities operated by Graf functioned as a continuing organization of sufficient
 6 structure to constitute an enterprise for RICO purposes. The enterprise alleged herein had an
 7 existence separate and apart from the pattern of racketeering activity because the corporations
 8 identified herein as being involved in the RICO activity had legal existences separate from
 9 their participation in the racketeering.

10 9. Employers Mutual LLC and Graf's 16 Nevada Associations were formed and have
 11 always operated, until the appointment of Dillon as the Independent Fiduciary, as shells and
 12 shams of the RICO Defendants set up solely to create the facade of a legitimate insurance
 13 program. The unpaid insurance claims discussed herein do not arise out of or are they
 14 connected in any way to Employers Mutual LLC's or Graf's 16 Nevada Associations' financial
 15 inability to pay those claims because those entities were not formed by the RICO Defendants
 16 for the purpose of providing real insurance and the RICO Defendants never intended for those
 17 entities to pay the incurred insurance claims .

18 10. Defendant William R. Kokott ("Kokott"), a resident of California, was also an alter
 19 ego of Employers Mutual LLC and Graf's 16 Nevada Associations and was a conspirator with
 20 Graf in the scheme to steal the premiums paid by the 7,000+ Employers Mutual Plans for
 21 health insurance for their respective employees and dependents of employees. Prior to
 22 Kokott's participation in this RICO scheme, Kokott had no experience in the fields of health
 23 insurance, ERISA, or the administration of an insurance plan.

24
 25 ¹Graf's 16 Nevada associations" include the following: American Association of Agriculture, Association of
 26 Automotive Dealers and Mechanics, Association of Barristers and Legal Aids, Communication Trade Workers
 27 Associations, Construction Trade Workers Associations, American Coalition of Consumers, Association of
 28 Cosmetologists, Culinary and Food Services Workers Association, Association of Educators, Association of Health Care
 Workers, National Alliance of Hospitality and Innkeepers, Association of Manufacturers and Wholesalers, Association
 of Real Estate Agents, Association of Retail Sellers, National Association of Transportation Workers, and National
 Association of Independent Truckers.

11. Defendant Nicholas Angelos ("Angelos"), a resident of California, was also an alter ego of Employers Mutual LLC and Graf's 16 Nevada Associations and was a conspirator with Graf and Kokott in the scheme to steal the premiums paid by the 7,000+ Employers Mutual Plans for health insurance. Prior to Kokott's participation in this scheme, Kokott had no experience in the fields of health insurance, ERISA, or insurance administration.

12. Defendant Kari Hanson ("Hanson"), a resident of California, was also an alter ego of Employers Mutual LLC and Graf's 16 Nevada Associations and was a conspirator with Graf, Angelos and Kokott in the scheme to steal the premiums paid by the 7,000+ Employers Mutual Plans for health insurance. Prior to Hanson's participation in this scheme, Hanson had no experience in the fields of health insurance, ERISA, or insurance administration.

ii. The Negligent Defendant Wholesale Insurance Producers

13. Defendant Agent Coalition of America, Inc., a California Corporation, doing business as Associated Agents of America (hereinafter "AAA") is a wholesale insurance producer that marketed the subject health insurance through its stable of Retail Insurance Producers to the 7,000+ Employers Mutual Plans for the benefit of the 30,000 participants. On or about October 1, 2000, AAA entered into a producer agreement to market the insurance in exchange for 15% of the premiums received by the RICO Defendants—a commission. The negligent acts, errors and omissions of AAA and the other negligent Defendant Insurance Producers occurred between October 1, 2000 and December 13, 2001, when the Honorable Judge Hagan granted the request for a Temporary Restraining Order filed by Elaine Chao, the Secretary of the United States Department of Labor, and appointed Dillon as the Independent Fiduciary of the 7,000+ Employers Mutual Plans.

14. Defendant Michael F. DeBello is a resident of California and an employee of AAA. DeBello marketed the fraudulent health insurance for AAA while acting within the course and scope of his employment with AAA.

15. Defendant Nathan Foreman, aka "Buddy" Foreman is a resident of California and an employee of AAA who also marketed the fraudulent health insurance for AAA while acting within the course and scope of his employment with AAA.

1 16. Defendant American Benefit Society, Inc. (hereinafter "ABS"), a corporation of
2 unknown origin, is a wholesale insurance producer that marketed the subject health insurance
3 through its stable of Retail Insurance Producers to the 7,000+ Employers Mutual Plans for the
4 benefit of the 30,000 participants. On or about February 1, 2001, ABS entered into a Producer
5 Agreement with AAA whereby ABS agreed to market the insurance in exchange for a 7%
6 commission on premiums received by the RICO Defendants. In the commission sharing
7 arrangement between AAA and ABS, for every premium dollar received by the RICO
8 Defendants, AAA would receive an 8% commission and ABS would receive a 7% commission
9 for a total commission of 15%.

10 17. Defendant Christopher S. Ashiotes is a resident of New Jersey and an employee of
11 ABS who marketed the fraudulent health insurance for ABS while acting within the course and
12 scope of his employment with ABS.

13 18. Defendant Reggie Caillouet ("Caillouet") is a resident of Houma, Louisiana and is
14 a wholesale producer that marketed the subject health insurance through his stable of Retail
15 Insurance Producers to the 7,000+ Employers Mutual Plans. Caillouet entered into a
16 Producer Agreement with AAA whereby Caillouet agreed to market the insurance in exchange
17 for a 10% commission on premiums received by the RICO Defendants. Again, for every
18 premium dollar paid, in accordance with the AAA and Caillouet commission sharing
19 arrangement, AAA would receive 5% and Caillouet would receive 10%. Caillouet would then
20 share his 10% of the commission with his stable of Retail Insurance Producers in separate
21 commission sharing arrangements.

22 19. The above-named Defendant Wholesale Insurance Producers acted as the agents
23 of the Defendant Retail Insurance Producers and the Employers Mutual Plans with regard to
24 the procurement of the requested insurance coverage. Retail insurance producers purchase
25 insurance for their clients through wholesale insurance producers. The wholesale insurance
26 producer is charged with the obligation to investigate the legitimacy of the insurance program
27 and, after due diligence, makes recommendations for placement of coverage to the retail
28 insurance producer for the benefit of the policyholder or EWBP. Information transmitted to

1 a wholesale insurance producer is, in all instances, information transmitted to the retail
2 insurance producer which is then relied on and passed on to the insured.

3 iii. The Negligent Defendant Retail Insurance Producers

4 20. Defendant Sierra Administration Marketing, Inc. ("Sierra"), a Nevada corporation,
5 had its principal place of business in Reno, Nevada and acted as a Retail Insurance Producer.
6 Sierra was part of Caillouet's stable of Retail Insurance Producers whereby Caillouet and Sierra
7 entered into a Producer Agreement whereby Sierra would receive an 8% commission and
8 Caillouet a 2% commission on premiums paid to the RICO Defendants from sales by Sierra.
9 In some instances Sierra, as with many of the Defendant Retail Insurance Producers, acted in
10 the capacity of a wholesaler or middleman whereby Sierra solicited other Defendant Retail
11 Insurance Producers to market the subject insurance. In those instances, AAA would receive
12 a 5% commission, Caillouet would receive a 2% Commission, Sierra would receive a 3%
13 commission and the down line Retail Insurance Producer would then receive a 5%
14 commission, for a total commission of 15%.

15 21. Retail Insurance Producers are hired by insureds to procure insurance coverage
16 appropriate for the risk being insured. Retail insurance producers act as the agents of the
17 insureds and, based upon their due diligence, pick the insurance product to be purchased.
18 In the attempted procurement of insurance during the period relevant to this litigation, the
19 Employers Mutual Plans relied on the Defendant Retail Insurance Producers who, in turn,
20 relied on the Defendant Wholesale Insurance Producers who, in turn, relied on the false
21 representations that coverage was to be provided to the 30,000 participants of the 7,000+
22 Employers Mutual Plans by admitted carriers. The false representations came from the Insider
23 RICO Defendants.

24 22. The negligent Defendant Retail Insurance Producers, in exchange for a
25 commission, sold the subject health insurance to the approximately 7,000+ Employers Mutual
26 Plans whose participants have approximately \$50,000,000 in unpaid health insurance and
27 prescription drug claims. The negligent Defendant Retail Insurance Producers are identified
28 in alphabetical order on Exhibit 1 to this Complaint.

23. Commission payment schedules obtained from the books and records of AAA, ABS, and Employers Mutual LLC identify the negligent Defendant Retail Insurance Producers who sold the facade of health insurance to the corresponding EWBP represented by Dillon. Matching the commission information with the unpaid claims information will determine the amount of damage caused to each EWBP by each Defendant Retail Insurance Producer.

24. The transaction described herein involving the attempted purchase of health insurance by the 7,000+ EWBP is typical of all of the attempted purchases of health insurance by all of the EWBP. Each EWBP attempted to purchase their health insurance from a Retail Insurance Producer who relied upon the recommendation that coverage was to be placed with an admitted carrier by a Wholesale Insurance Producer. In the procurement of the subject insurance, the Retail Insurance Producers as well as the Wholesale Insurance Producers are deemed to act for the benefit of the insureds and as the agent of the insureds. Each Defendant Insurance Producer in this case recommended the defective insurance in reliance upon fraudulent misrepresentations about the existence of coverage and legality of the program which came from the RICO Defendants.

IV

AGENCY AND INFORMATION ALLEGATIONS

25. The plaintiff alleges that in connection with the acts and events alleged herein, the RICO Defendants, and each of them, were acting in concert, participation, or collaboration with each other, authorized or ratified the acts of each other, were agents or employees of the other, and acted within the course and scope of such agency and/or employment. Accordingly, each RICO Defendant is jointly and severally liable for the acts of each other RICO Defendant as alleged herein. The plaintiff alleges that in connection with the acts and omissions attributable to the Defendant Insurance Producers, each negligent Defendant Wholesale Insurance Producer and each negligent Defendant Retail Insurance Producer is only responsible for the losses attributable to those EWBP to which each defendant is in privity of contract.

///

26. All allegations made in this Complaint have been based on information and belief, except those allegations that pertain to plaintiff, which are based on his personal knowledge. Plaintiff's information and belief is based on, *inter alia*, the investigation conducted by plaintiff and plaintiff's attorneys after their retention. Each and every allegation and factual contention contained in this Complaint has evidentiary support or, alternatively, pursuant to Federal Rule of Civil Procedure 11(b)(3), is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery by plaintiff or his counsel.

27. The RICO Defendants, and each of them, attempted to prevent the 7,000+ EWBP's from discovering the fact that they had purchased the facade of health insurance by making false representations about the reasons for the failure of the payment of their claims. The RICO Defendants, and each of them, also attempted to prevent Dillon from discovering sufficient information to prosecute this action by, among other things, deleting critical data from Employers Mutual LLC computers and removing premium and claims data from Employers Mutual LLC's offices. Based upon Dillon's diligent work, he has only recently obtained sufficient information to know the identity of the defendants, the claims of the 7,000+ EWBP's, and the facts supporting this Complaint.

V

GENERAL FACTUAL ALLEGATIONS

A. The Scheme of the RICO Enterprise

28. The enterprise commenced with the incorporation of Employers Mutual LLC in Nevada on July 28, 2000 by RICO Defendants Kokott and Angelos. RICO Defendant Graf was not identified on the corporate books of Employers Mutual LLC because he had a prior disciplinary record as the result of operating another insurance scam using the name of First Continental Life & Accident Insurance Company ("First Continental") without its knowledge or consent. Graf's experience operating the prior fraudulent insurance scam involving First Continental made him the principal organizer of the subject RICO enterprise, which again used admitted insurers names without their permission. Kokott and Angelos were both in the construction industry and had no prior experience in insurance, ERISA, or operating insurance

1 plans. Defendant Hanson was Defendant Graf's live-in girlfriend. The decision making
2 structure of the enterprise was hierarchical with Kokott, Hanson and Angelos being subservient
3 to Graf.

4 29. Between December 27, 2000 and February 15, 2001 RICO Defendants Kokott and
5 Angelos, following the instructions of Graf, established the 16 Nevada Associations referred
6 to above. On January 29, 2001, Angelos, ostensibly on behalf of each of the 16 Nevada
7 Associations and Kokott, ostensibly on behalf of Employers Mutual LLC, executed 16 identical
8 agreements between each Association and Employers Mutual LLC. On their face, the 16
9 agreements attempted to create relationships whereby Graf's 16 Nevada Associations would
10 provide health insurance to their respective members by buying insurance coverage from
11 admitted carriers, with, at a minimum, an A- rating, and Employers Mutual LLC would act as
12 a "trustee" of the premiums paid by the Employers Mutual Plans to each Association for the
13 purchase of said insurance and manage the affairs of each Association for a 25% fee. In
14 reality, these incestuous agreements were entered into by alter egos of each corporation, with
15 no arms-length negotiations, for the sole and exclusive purpose of creating the RICO enterprise
16 which would serve as the facade of a legitimate insurance program in which the RICO
17 Defendants could then sell the fraudulent health insurance and steal the premiums.

18 30. All actions of the RICO Defendants which were performed to effectuate the goal
19 of stealing premiums were acts performed to the detriment of Employers Mutual LLC and
20 Graf's 16 Nevada Associations because the actions could not conceivably benefit these
21 entities. These entities made the RICO activities possible and profitable by providing a facade
22 of legitimacy for the illegal activities.

23 31. Once the RICO enterprise was established (which was to create the facade of an
24 insurance program) the RICO Defendants set about to create and maintain a national
25 marketing network of legitimate insurance producers to sell the fraudulent health insurance.
26 To accomplish this task, the RICO Defendants falsely represented to the Defendant Wholesale
27 Insurance Producers and the Defendant Retail Insurance Producers that the members of Graf's
28 16 Nevada Associations were to be insured by a licensed insurance carrier with an A- or better

1 Best Insurance Rating. Multiple false representations constituting predicate acts were made
 2 by the RICO Defendants to the Defendant Insurance Producers as to the identity of the A-
 3 rated licensed insurer providing the benefits to the participants through their membership in
 4 Graf's 16 Nevada Associations. Depending upon the time, person and situation, the RICO
 5 Defendants represented, among other things, that the members of Graf's 16 Nevada
 6 Associations were insured by Sun Life Insurance Company of Canada ("Sun Life"), United
 7 Wisconsin Life Insurance Company ("United Wisconsin"), Golden Rule Insurance Company
 8 ("Golden Rule"), a generic A- or better rated company, or First Continental, a licensed
 9 Domestic Insurance Company to be purchased by the RICO Defendants.

10 32. For instance, on or about September 29, 2000, the RICO Defendants forged a letter
 11 written on Sun Life's letterhead which purported to bind coverage for the members of Graf's
 12 16 Associations. The letter, purportedly executed by Linda L. Haithway, the Senior Vice
 13 President of the Group Reinsurance and Market Development Division of Sun Life, stated as
 14 follows: "Pursuant to your request I am informing you that our company is willing to accept
 15 your Association business as submitted for the desired October 1, 2000 effective date."

16 33. The RICO Defendants, utilizing the U.S. Mail, provided copies of the forged Sun
 17 Life letter to Defendant Insurance Producers as proof that Graf's 16 Nevada Associations were
 18 fully insured by a licensed carrier. However, Sun Life has confirmed that: (i) the binder letter
 19 is fraudulent; (ii) Linda Haithway could not be located as a past or present employee at Sun
 20 Life; (iii) the logo used in the letter's letterhead had not been used after March 2000, yet the
 21 letter was dated September 29, 2000 and Sun Life did not have a "Group Reinsurance and
 22 Market Department" as represented in the letter. Sun Life never agreed to provide insurance
 23 to the participants of Graf's 16 Nevada Associations as represented by the RICO Defendants.

24 34. In addition to the misrepresentation about coverage from Sun Life, the RICO
 25 Defendants provided in the U.S. Mail the application forms that were required to be filled out
 26 by each and every EWBP and their participants as a precondition to becoming insured. The
 27 application forms falsely represented to the EWBP's and their respective participants that the
 28 "Association/Employer health plan being offered is an **insured plan...**" [emphasis added]. The

1 application forms also stated that "...the Association/Employer health plan being offered is a
 2 fully funded plan..." and the "... Plan is a fully funded health plan with coverage purchased
 3 through an A- (Excellent) or better insurance company". The facade of health insurance sold
 4 by the RICO Defendants was never insured by any insurer and never insured through an A-
 5 or better insurance company. The RICO Defendants never had authority to bind the coverage
 6 with an A-rated carrier as they had represented.

7 35. On or about November 20, 2000, the RICO Defendants transmitted a fraudulent
 8 letter, utilizing the U.S. Mail, to the Defendant Insurance Producers to be retransmitted to the
 9 EWBP's, stating that: "We are pleased to announce that all of our Association Plans being
 10 offered are in conjunction with United Wisconsin Life Insurance Company . . . United
 11 Wisconsin Life Insurance Company is rated A- (Excellent) by A.M. Best." United Wisconsin
 12 never agreed to insure the members of Graf's 16 Nevada Associations. The November 20,
 13 2000 representation was false. In addition, Wisconsin Life had never granted the RICO
 14 Defendants the authority to bind coverage on its behalf.

15 36. On or about January 2, 2001, Golden Rule executed an Independent Broker's
 16 Contract appointing Richard Wiest as a broker with the authority to submit applications for
 17 health coverage to Golden Rule. In this agreement, Golden Rule retained the exclusive right,
 18 pursuant to its underwriting guidelines, to accept or reject the applicants submitted by Richard
 19 Wiest, and Richard Wiest never had the authority to bind Golden Rule to any insurance
 20 contract. In addition, the Independent Broker's Contract appointed Richard Wiest as the
 21 broker for Golden Rule and not Employers Mutual LLC, an unlicensed entity from Nevada.

22 37. Notwithstanding the above, on January 5, 2001, Richard Wiest executed a letter
 23 as the Director of Sales and Marketing for Employers Mutual LLC which falsely stated that:

24 This letter is to notify you that our appointment to Golden Rule
 25 Insurance Company has been approved as of January 2, 2001.
 26 Pursuant to our exclusive agreement Employers Mutual and all the
 Associations shall be provided the Golden Rule health products as
 requested by the Board of Directors.

27 38. On or about January 10, 2001, the RICO Defendants transmitted a fraudulent
 28 memorandum, utilizing the U.S. Mail, to the Defendant Insurance Producers to be

1 retransmitted to the EWBPs, stating that "the policy being issued to each participant is fully
2 funded and fully insured." Additionally, the memo states that "All Associations are domiciled
3 in Nevada and all participants are enrolled through one of the sixteen Nevada Associations.
4 The applicant's specific association facilitates the purchase of the insurance policy from an A
5 rated or better insurance company; and in most states the coverage is provided through the
6 Golden Rule Insurance Company." Golden Rule never provided health insurance to the
7 members of Graf's 16 Nevada Associations. Golden Rule never authorized the RICO
8 Defendants to bind such coverage on its behalf.

9 39. On or about October 16, 2001, Golden Rule filed suit against Employers Mutual
10 LLC and others in the U.S. District Court for Nevada alleging trademark infringement and false,
11 deceptive, and/or misleading practices. Golden Rule contends in that litigation that on or
12 about January 23, 2001 it first became aware that the RICO Defendants were using the
13 GOLDEN RULE® name and mark to sell health insurance. At said time, Golden Rule received
14 a packet of information from a Florida insurance producer in which the RICO Defendants
15 claimed to have an exclusive relationship with Golden Rule. This packet included the January
16 10, 2001 memo referred to above which stated that Employers Mutual LLC was providing the
17 insurance for its Program through Golden Rule, an A-rated carrier.

18 40. As a result, on January 23, 2001 and then again on March 8, 2001, Golden Rule
19 contacted the RICO Defendants to inform them that Golden Rule's product lines and marks
20 were the property of Golden Rule and to express concern that the RICO Defendants were
21 using the GOLDEN RULE® name and mark without Golden Rule's authorization. Golden Rule
22 demanded that the RICO Defendants cease claiming an affiliation with Golden Rule and that
23 it send a communication to its marketing representatives stating that Golden Rule was not
24 associated in any way with the insurance being sold by the RICO Defendants.

25 41. The RICO Defendants, however, did not cease claiming an affiliation with Golden
26 Rule. In early April 2001, the Colorado Department of Insurance ("Colorado DOI") contacted
27 Golden Rule, and stated that it, along with several other state insurance

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1 departments, were investigating the RICO Defendants and Golden Rule's ostensible ongoing
2 affiliation with them.

3 42. In late July 2001, and continuing into August and September of 2001, Golden Rule
4 received new inquiries from Golden Rule's marketing service centers and insurance producers
5 throughout the country asking whether Golden Rule did have the relationship with the RICO
6 Defendants as was being represented by the RICO Defendants. Several of the inquiries
7 enclosed copies of promotional material the writers had received from the RICO Defendants,
8 which continued to falsely state that Golden Rule was providing insurance to Graf's 16
9 Nevada Associations and their members.

10 43. On or about August 31, 2001, Golden Rule sent a letter to each state Insurance
11 Commissioner, with copies to the fraud department of each states' Department of Insurance,
12 stating that "Golden Rule does not have, nor has it ever had," any role whatsoever in the RICO
13 Defendants' program and asking for the commissioners' "assistance in stopping the misuse of
14 [the Golden Rule] name...".

15 44. Golden Rule has never consented to any use by the defendants of its GOLDEN
16 RULE® trademark or trade name. On the contrary, Golden Rule has demanded that
17 defendants not use the GOLDEN RULE® name and mark, nor imply any affiliation between
18 the defendants and Golden Rule. The RICO Defendants, however, refused to comply with
19 Golden Rule's demands and continued their unauthorized use of the GOLDEN RULE® mark.
20 Golden Rule does not and has never provided insurance to the members of Graf's 16 Nevada
21 Associations, the participants of the 7,000+ Employers Mutual Plans which are now
22 represented by Dillon.

23 45. On or about June 29, 2001, after getting caught using Golden Rule's name, the
24 RICO Defendants transmitted another false letter, utilizing the U.S. Mail, to the Defendant
25 Insurance Producers to be retransmitted to the EWBPs, this time stating that "... Employers
26 Mutual is in the process of seeking to purchase a Best Rated insurance company licensed in
27 most states. Additionally, a second insurance company is also in the process of being
28 purchased to complete our required states. Upon regulatory approval all plans will then

1 become fully insured. An official announcement naming the companies will be made shortly,
2 once our due diligence has been completed." The June 29, 2001 letter was, like all others,
3 another false representation made to the Defendant Insurance Producers to keep the premiums
4 flowing to the RICO Defendants.

5 46. The RICO Defendants never intended to purchase one or two Best Rated Insurance
6 Companies and never had the economic wherewithal to purchase said companies. Because
7 of Graf's prior experience falsely utilizing the name of First Continental without First
8 Continental's permission, Graf knew that First Continental was potentially for sale. Without
9 mentioning Graf's name, Defendant Kokott, on behalf of Employers Mutual LLC, made inquiry
10 at First Continental about a possible acquisition. Based solely on this inquiry, the RICO
11 Defendants then misrepresented to the Defendant Insurance Producers that the acquisition of
12 First Continental was "imminent" and the Defendant Insurance Producers should not move
13 their clients and keep the premiums flowing to the RICO Defendants.

14 47. On or about July 31, 2001, First Continental advised Kokott of Employers Mutual
15 LLC that the Texas Department of Insurance had advised First Continental that it had been
16 contacted by a number of Texas agents who described the Employers Mutual LLC acquisition
17 as being "imminent". This notification came shortly after First Continental was contacted by
18 a Florida Insurance Producer who had disclosed that First Continental's name was being used
19 to market insurance in Florida by Employers Mutual LLC. First Continental ordered Employer's
20 Mutual LLC to cease and desist using its name to market insurance.

21 48. By the fall of 2001, many of the 7,000+ EWBP's began to discover that their
22 participants' claims were not being paid and, in response, complaints started to be made to
23 Employers Mutual LLC. In response, Employers Mutual LLC terminated its relationship with
24 its Nevada based third party claims administrator, Sierra Administration, and blamed this
25 administrator for the fact that the payment of medical claims had been delayed. Employers
26 Mutual LLC then assured all of the Defendant Insurance Producers, who in turn assured all of
27 the 7,000+ EWBP's and the 30,000 participants, that claims would be paid. For instance, on

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1 November 6, 2001, Employers Mutual LLC, utilizing the U.S. Mail, sent a false letter to all
 2 Defendant Insurance Producers and to all participants stating that:

3 "We appreciate your patience as we work through the transition
 4 from Sierra Administration.

5 Enclosed is a questionnaire with October and November billing.
 6 Please complete the questionnaire and submit it along with your
 payment to Employers Mutual, LLC, 711 South Carson, Ste. 5,
 Carson City, NV 89701

7 Please note that all claims are being reconciled and payments
 8 are being sent to your providers. Also you can be assured that
 9 your membership and health benefits are in tact and we will
 continue to provide you with benefits as we work to resolve
 the many transitional issues."

10 49. Based upon these misrepresentations, and others, the RICO Defendants were able
 11 to create a national marketing network of insurance producers who relied upon these various
 12 misrepresentations and sold the facade of health insurance to the 7,000+
 13 Employers Mutual Plans for the benefit of the RICO Defendants who then stole the premiums
 14 paid by the Employers Mutual Plans. Based upon these misrepresentations, and others, the
 15 RICO Defendants were able to maintain the operation of the RICO enterprise until plaintiff
 16 was appointed Independent Fiduciary on December 13, 2001.

17 50. Based upon these ongoing and continuous misrepresentations transmitted by the
 18 RICO Defendants to the Defendant Insurance Producers and then negligently retransmitted
 19 by the Defendant Insurance Producers to the 7,000+ EWBP's and their participants, all
 20 defendants are estopped to argue that any applicable statute of limitations started to run prior
 21 to the appointment of Dillon as Independent Fiduciary on December 13, 2001. To argue that
 22 the statute started to run any earlier would be an attempt to benefit from the fraud committed
 23 by the RICO Defendants and, therefore, a ratification of that fraud.

24 51. Premiums stolen by the RICO Defendants from the premiums paid by the 7,000+
 25 Employers Mutual Plans include, among others, the following illegal transfers:

26 (a) From January 2001 to October 2001, \$830,395.00 was transferred from
 27 Employers Mutual LLC to Columbia Health Network, Inc. ("Columbia"), a corporation owned
 28 and controlled through Graf by his live-in girlfriend RICO Defendant Kari Hanson. Columbia

1 was established as an alleged provider network, or service provider, but in reality it was part
2 of the RICO enterprise and used solely as a tool to deplete the premiums paid by the 7,000+
3 Employers Mutual Plans for the advantage and gain of the RICO Defendants pursuant to the
4 scheme of the RICO enterprises.

5 (b) From January 2001 to October 2001, \$216,451.00 was transferred from
6 Employers Mutual LLC to Western Health Network ("Western"), a corporation owned and
7 controlled by the RICO Defendants. Western was ostensibly established as an alleged
8 provider network, or service provider, but in reality it was also part of the RICO enterprise and
9 used solely as another tool to deplete the premiums paid by the 7,000+ Employers Mutual
10 Plans for the advantage and gain of the RICO Defendants pursuant to the scheme of the RICO
11 enterprise.

12 (c) From January 2001 to October 2001, \$187,484 was transferred from
13 Employers Mutual LLC to WRK Investments, Inc. ("WRK"), a corporation owned and
14 controlled by the RICO Defendants. WRK was established as an alleged investment advisor
15 or service provider, but in reality it was part of the RICO enterprise and used solely as another
16 tool to deplete the premiums paid by the 7,000+ Employers Mutual Plans for the advantage
17 and gain of the RICO Defendants pursuant to the scheme of the RICO enterprise.

18 (d) From January 2001 to October 2001, \$132,484 was transferred from
19 Employers Mutual LLC to Graf Investments, a corporation owned and controlled by Graf. Graf
20 Investments was established as an alleged investment advisor or service provider, but in reality
21 it was also part of the RICO enterprise and used solely as another tool to deplete the premiums
22 paid by the 7,000+ Employers Mutual Plans for the advantage and gain of the RICO
23 Defendants pursuant to the scheme of the RICO enterprise.

24 (e) From January 2001 to October 2001, approximately \$100,000 was
25 transferred directly to Graf's live-in girlfriend, RICO Defendant Kari Hansen, for, allegedly,
26 services rendered to Employers Mutual LLC, but in reality solely for the benefit of the RICO
27 enterprise because Graf's girlfriend never acted as an agent or employee of Employers Mutual

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1 LLC because she never acted for the benefit of Employers Mutual LLC but always acted to the
2 detriment of the corporation.

3 (f) From January 2001 to October 2001, approximately \$100,000 was transferred
4 directly to Graf for, allegedly, services rendered to Employers Mutual LLC, but in reality solely
5 for the benefit of the RICO enterprise because Graf never acted as an agent or employee of
6 Employers Mutual LLC because he never acted for the benefit of Employers Mutual LLC but
7 always acted to the detriment of the corporation.

8 52. The scheme of the RICO enterprise, as with all Ponzi schemes, recognized that the
9 creation and maintenance of the facade of an insurance program required the use of premiums
10 to pay some claims, the fees for attorneys, the fees for third party administrators, the
11 commissions of agents, the fees of the Preferred Provider Network and other business
12 expenses. These payments, however, were made only in furtherance of (i) the scheme to steal
13 premiums and (ii) to provide a defense for the RICO Defendants that the failure of the program
14 was the result of bad business judgment, not larceny.

15 **B. The Predicate Acts of the RICO Defendants in Furtherance of the Ongoing Scheme**

16 53. In furtherance of the scheme and to effectuate the objects thereof, Graf, Kokott and
17 Angelos each committed overt acts including, but not limited to, the following:

18 (a) Graf, Kokott, Hanson and Angelos organized a network of Wholesale
19 Insurance Producers and Retail Insurance Producers to market to their clients the health
20 insurance to cover the members of Graf's 16 Nevada Associations by the alleged admitted
21 carriers;

22 (b) Graf, Kokott, Hanson and Angelos made multiple false statements by
23 misrepresenting to the Defendant Insurance Producers that admitted carriers had agreed to
24 insure the members of Graf's 16 Nevada Associations and transmitted in the U.S. Mail and
25 over the interstate telephone system the false statements to the Wholesale Insurance Producers
26 and Retail Insurance Producers who relied thereon;

27 (c) Graf, Kokott, Hanson and Angelos opened accounts at various banks,
28 deposited the premiums paid by the 7,000+ Employers Mutual Plans into those accounts and

1 then misappropriated those funds by transferring them to corporate members of the enterprise
 2 to then use the funds for their own individual advantage and gain;

3 (d) Graf, Kokott, Hanson and Angelos, as part of the pattern of racketeering,
 4 reinvested some of the premium dollars back into the enterprise in order to perpetuate its
 5 maintenance and operation by paying some claims, the fees of attorneys, the commissions of
 6 producers, the fees of third party administrators, the fees of other professionals and other
 7 business expenses;

8 (e) Graf, Kokott, Hanson and Angelos made misrepresentations in the U.S.
 9 Mail and over the interstate phone system to EWBP's and participants about their intent to pay
 10 claims and their reasons for the delay and refusal to pay claims so that they could fraudulently
 11 prolong the insurance operation to loot additional premiums; and

12 (f) Graf, Kokott, Hanson and Angelos diverted premiums into their personal
 13 accounts for no consideration as part of the scheme of the RICO enterprise.

14 **C. The Negligent Acts and Omissions of the Defendant Insurance Producers**

15 54. The first and last line of defense to prevent insurance fraud is the diligent licensed
 16 insurance producer. The current economic environment has generated escalating premiums
 17 and restrictive underwriting in the health insurance industry. This "hard market" has created
 18 a breeding ground for unscrupulous individuals to market fraudulent alternatives to standard
 19 health insurance coverage to unsophisticated consumers who, regrettably, assume that their
 20 insurance must be bona fide because this is the United States and they paid their premiums.

21 55. The 400 Defendant Insurance Producers named in this Complaint failed at the
 22 simple task of performing adequate due diligence before recommending the subject insurance
 23 to their respective clients. Numerous red flags were present to alert a competent insurance
 24 producer to the fact that he or she was being had at the expense of the client EWBP's.
 25 Examples of red flags which would have raised the suspicion of a reasonably prudent
 26 insurance producer included, among others, the following:

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(a) Employers Mutual LLC was incorporated on July 28, 2000, and Graf's 16 Nevada Associations were incorporated between December 17, 2000 and February 15, 2001. Financial data on premium flow reflects that the marketing of this fraudulent insurance started in earnest in February of 2001. "Seasoning," a fundamental concept in the insurance industry, means that the people or entities that the insurance producers are dealing with have been in business for a reasonable length of time to establish a reputation within the industry for competency and integrity. The Defendant Insurance Producers failed to recognize that Employers Mutual LLC and Graf's 16 Nevada Associations were not seasoned and, therefore, they had no reputation within the industry for competency and integrity for the insurance producer to rely upon when the RICO Defendants represented they had authority to bind coverage for the A-rated carriers and did, in fact, bind such coverage.

(b) The Defendant Insurance Producers also failed to perform any investigation to determine whether Employers Mutual LLC was physically capable of operating the complex business of insurance administration as was required given the promises of performance made by the RICO Defendants. A cursory investigation by all Defendant Insurance Producers would have revealed that: (i) Employers Mutual LLC was not licensed in any capacity whatsoever in the State of Nevada; (ii) Employers Mutual LLC had no audited financial reports and had not obtained any bonding to act as a "trustee" of the \$15,000,000 plus in premiums paid over to Employers Mutual LLC to buy insurance from an admitted carrier; (iii) Employers Mutual LLC, although incorporated in Nevada, had no employees in Nevada; (iv) Employers Mutual LLC's business address in Nevada was a mail drop at Mail Boxes Etc.; (v) Kokott and Angelos, the ostensible principals of Employers Mutual LLC, were in the construction business and had no experience in insurance; (vi) Graf, the alter ego of Employers Mutual LLC, had been accused by the California Department of Insurance in October of 1998 of utilizing First Continental's name to sell insurance without its consent and "acting as an insurer without certificate of authority from the Insurance Commissioner; falsely representing to agents and subscribers that the health plans were underwritten by California-licensed insurance companies; receiving premium; paying claims; incurring outstanding

1 unpaid claims; and paying personal expenses from premium monies received"; and (vii) Graf
2 had been Ordered to Cease and Desist the above-described activities and Ordered to pay the
3 outstanding unpaid claims, which he did not do.

4 (c) The Defendant Insurance Producers also failed to perform any
5 investigation into the purpose for the creation and maintenance of Graf's 16 Nevada
6 Associations. Membership in one of Graf's 16 Nevada Associations was a precondition to
7 obtaining insurance coverage from one of the alleged admitted carriers. Typically, an
8 association is created and governed by its members to promote the social, business and/or
9 educational interests of its members. Membership is offered to persons who share a common
10 interest in something other than the purchase of insurance. Graf's 16 Nevada Associations
11 were owned, operated and controlled by the RICO Defendants and not the members of the
12 Associations. Membership in Graf's 16 Nevada Associations was provided to the employees
13 of unrelated heterogeneous employers with no pre-existing relationship between them who
14 were simply desiring to purchase insurance for their employees. The fact that Graf's 16
15 Nevada Associations were created as a vehicle to provide the facade of health insurance was
16 another red flag missed by the Defendant Insurance Producers. In addition, the concept of
17 selling membership in an association to obtain health insurance coverage issued by an
18 admitted carrier is inherently unreasonable. It is the cart leading the horse. Generally, a pre-
19 existing association buys health insurance from an admitted carrier for its existing members
20 as one of many benefits of membership. Selling association membership to obtain insurance
21 is nothing more than selling highly suspect insurance.

22 (d) The Defendant Insurance Producers failed to perform any investigation
23 to determine whether Employers Mutual LLC had been granted the authority to bind coverage
24 by any of the admitted carriers referred to by the RICO Defendants as the insurers on the risk.
25 A simple telephone call to Sun Life, United Wisconsin, Golden Rule or First Continental by
26 the 400 Defendant Insurance Producers would have revealed that Employers Mutual LLC was
27 not authorized as an agent to bind coverage from these carriers for the 7,000+ EWBP's
28 victimized in this scam. In addition, the Defendant Insurance Producers failed to realize that

1 there was no admitted carrier on the risk when ID cards were presented to their respective
2 clients without the name of a licensed insurer listed thereon.

3 (e) The low premium rates and high commission structure were additional
4 red flags missed by the Defendant Insurance Producers. Morbidity does not change when a
5 participant goes from one insurance plan to another. Given the increase in premiums charged
6 by admitted carriers in the industry at this point in time, it was a red flag for a competent
7 insurance producer when Employers Mutual LLC offered similar coverage at reduced rates.
8 The reasonable insurance producer's scrutiny must increase when the program offers high
9 commissions which cannot be afforded without a concomitant rise in premiums charged.

10 (f) Employers Mutual Casualty Company is a large Property & Casualty Insurer
11 domiciled in Iowa and licensed in all 50 states. The name Employers Mutual LLC is
12 misleadingly similar to Employers Mutual Casualty Company and, most likely, violates the
13 latter's registered trade name. The use of the name Employers Mutual LLC would have raised
14 a red flag to a reasonably prudent insurance producer, but did not cause sufficient concern to
15 the Defendant Insurance Producers named in this Complaint.

16 (g) On August 14, 2001 the Florida Department of Insurance issued a Cease
17 and Desist Order against Employers Mutual LLC and Graf's 16 Nevada Associations accusing
18 them of operating an illegal health insurance program. Such an Order would have been
19 instantly communicated to the National Association of Insurance Commissioners (NAIC) which
20 serves as a clearinghouse of information relevant to insurance regulation throughout the
21 United States. The NAIC would have then passed this information on to its members, who are
22 the Commissioners of Insurance from each state of the United States and its territories. After
23 August 14, 2001, public information was available to all Defendant Insurance Producers
24 concerning the nefarious activity of the RICO Defendants and their operation of Employers
25 Mutual LLC. After August 14, 2001, it was additionally unreasonable for Defendant Insurance
26 Producers to place EWBP's into the fraudulent insurance program marketed by the RICO
27 Defendants.

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56. The 400 Defendant Insurance Producers were negligent in recommending the purchase of the fraudulent insurance to the 7,000+ Employers Mutual Plans.

57. The 400 Defendant Insurance Producers were negligent again, on a daily basis, when they failed to inform their clients of the need to obtain alternative coverage. This failure was ongoing and continuous, but became especially egregious once the Florida Department of Insurance had issued its Cease and Desist Order on August 14, 2001. The Defendant Insurance Producers' failure to move their clients constitutes additional daily acts of negligence from the inception of each policy to December 13, 2001, when Dillon was Independent Fiduciary.

VI

FIRST CLAIM FOR RELIEF

18 U.S.C. §1962(c)

Civil RICO Against the RICO Defendants

58. Plaintiff refers to and incorporates by reference each allegation contained in Paragraphs 1 through 57 of the Complaint as through fully set forth herein.

59. Graf, Kokott, Hanson and Angelos are persons within the meaning of 18 U.S.C. §1961(3) and are the persons involved in the creation and maintenance of a racketeering enterprise. Graf, Kokott, Hanson and Angelos, and each of them, have been employed by and/or associated with the enterprise and, while so employed and/or associated, have conducted, directed, managed or participated in, either directly or indirectly, the conduct of the affairs and business of the enterprise through the described pattern of racketeering activity.

A. The Fraudulent Scheme

60. Beginning in July of 2000 to the present, Graf, Kokott, Hanson and Angelos created and maintained a series of corporations using the instrumentalities of interstate commerce to effectuate the ongoing financial crimes enterprise of collecting premiums under the guise of offering valid insurance issued by admitted carriers and distributing the

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1 premium money amongst themselves and into the enterprise without buying the insurance
2 from admitted carriers as promised.

3 **B. The Enterprise**

4 61. The enterprise was the network of corporations and associations formed by the
5 RICO Defendants to create the facade of a legitimate insurance program through the
6 pattern of racketeering activity described herein. The network itself, within the meaning of
7 RICO, was a separate enterprise organized, operated, managed and directed by Graf,
8 Kokott and Angelos during its extended life. The enterprise conducted its business and
9 transacted its affairs in various locations in the United States by using interstate commerce
10 and affecting interstate commerce and was at all times an enterprise as defined in 18
11 U.S.C. §1961(4).

12 **C. Pattern of Racketeering Activity**

13 62. In furtherance of the ongoing scheme, the RICO Defendants, and each of them,
14 committed predicate acts between July 28, 2000 and December 13, 2001 including mail
15 fraud and wire fraud.

16 63. Graf, Kokott, Hanson and Angelos sent or caused to be sent in the U.S. Mail to
17 the Wholesale Insurance Producers, the Retail Insurance Producers and the EWBP's
18 numerous misleading correspondence, invoices for insurance, certificates of insurance
19 coverage, and supporting documentation which documents were relied upon by the
20 recipients to the detriment of the 7,000+ Employers Mutual Plans because the RICO
21 Defendants had not purchased insurance from admitted carriers as promised.

22 64. Graf, Kokott, Hanson and Angelos, and each of them, repeatedly used or
23 caused to be used the interstate telephone system as an instrument to make the same
24 misleading statements that were made through the use of the U.S. Mail. Additionally, from
25 time to time the insider RICO Defendants would wire transfer money generated from the
26 ongoing operation of the enterprise to bank accounts in the United States to further
27 perpetuate the scheme by reinvestment back into the enterprise.

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65. As the actual and proximate cause of the operation of the enterprise and the commission of the predicate acts committed by the RICO Defendants, and each of them, of mail fraud, wire fraud and the investment of funds into the enterprise, the plaintiff has been damaged as follows:

(a) The 7,000+ Employers Mutual Plans identified herein have suffered property damage by the payment of premiums for non-existent insurance in an amount exceeding \$15,000,000; and

(b) The 7,000+ Employers Mutual Plans referred to herein have suffered property damage by the occurrence of approximately \$50,000,000 in claims payable to their employees under their respective promised insurance policies which claims have not been paid and would have been paid had the 7,000+ EWBP's bought alternative and legitimate insurance.

66. Pursuant to 18 U.S.C. §1962, the damages incurred by the 7,000+ Employers Mutual Plans as the result of the conduct of the RICO Defendants should be trebled.

VII

SECOND CLAIM FOR RELIEF

18 U.S.C. §1962(d)

Conspiracy to Commit Civil RICO Against the RICO Defendants

67. Plaintiff refers to and incorporates by reference each allegation contained in Paragraphs 1 through 66 of the Complaint as though fully set forth herein.

68. Graf, Kokott, Hanson and Angelos, and each of them, have been employed by and/or associated with the enterprise and, while so employed and/or associated, have conducted, directed, managed or participated in, either directly or indirectly, the conduct of the affairs and business of the enterprise through the above-described pattern of racketeering activity. Graf, Kokott, Hanson and Angelos have all conspired to participate in the RICO enterprise and have knowingly agreed to commit the predicate acts.

69. As the actual and proximate cause of the operation of the enterprise and the commission of the predicate acts committed by the RICO Defendants, and each of them, of

1 mail fraud, wire fraud and the investment of funds into the enterprise and the conspiracy to
2 commit these acts, the plaintiff has been damaged as follows:

3 (a) The 7,000+ Employers Mutual Plans identified herein have suffered
4 property damage by the payment of premiums for non-existent insurance in an amount
5 exceeding \$15,000,000; and

6 (b) The 7,000+ Employers Mutual Plans identified herein have suffered
7 property damage by the occurrence of approximately \$50,000,000 in claims payable to their
8 participants under the respective promised insurance policies which claims have not been
9 paid. The claims would have been paid had the EWBP's bought legitimate health insurance for
10 their participants.

11 70. Pursuant to 18 U.S.C. §1962, the damages incurred by the 7,000+ Employers
12 Mutual Plans as the result of the conduct of the RICO Defendants should be trebled.

13 VIII

14 THIRD CLAIM FOR RELIEF

15 Fraud Against the RICO Defendants

16 71. Plaintiff refers to and incorporates by reference each allegation contained in
17 Paragraphs 1 through 70 of the Complaint as though fully set forth herein.

18 72. Graf, Kokott, Hanson and Angelos sent or caused to be sent in the U.S. Mail and
19 over the Internet to the Wholesale Insurance Producers, the Retail Insurance Producers and
20 the EWBP's numerous misleading correspondence, invoices for insurance, certificates of
21 insurance coverage, and supporting documentation which documents were relied upon by the
22 recipients to the detriment of the 7,000+ Employers Mutual Plans because they paid
23 premiums for non-existent insurance.

24 73. As the actual and proximate cause of the fraud committed by the RICO Defendants,
25 and each of them, the plaintiff has been damaged as follows:

26 ///

27 ///

28 ///

1 (a) The 7,000+ Employers Mutual Plans identified herein have suffered
2 property damage by the payment of premiums for non-existent insurance in an amount
3 exceeding \$15,000,000; and

4 (b) The 7,000+ Employers Mutual Plans identified herein have suffered
5 property damage by the occurrence of approximately \$50,000,000 in claims payable pursuant
6 to their respective promised insurance policies (which claims have not been paid). The claims
7 would have been paid had the EWBP's bought legitimate health insurance for their
8 participants.

9 IX

10 FOURTH CLAIM FOR RELIEF

11 Breach of Contract to Procure Valid Insurance Against
12 the Defendant Wholesale and Retail Insurance Producers

13 74. Plaintiff refers to and incorporates by reference each allegation contained in
14 Paragraphs 1 through 73 of the Complaint as though fully set forth herein.

15 75. A contract to procure valid health insurance arises between an insurance producer
16 and its client after the client selects an insurance program offered by the insurance producer.
17 Implicit in the contract to procure is the promise by the insurance producer to offer only an
18 insurance program which complies with the law, is real and which the insurance producer has
19 authority to offer.

20 76. The 7,000+ Employers Mutual Plans entered into individual contracts with each
21 of their respective Defendant Retail Insurance Producers and Defendant Wholesale Insurance
22 Producers to procure valid medical insurance for the participants of each respective EWBP,
23 in exchange for a percentage of the premiums paid.

24 77. Each and every one of the 7,000+ Employers Mutual Plans complied with the
25 terms of their respective contracts by selecting the insurance offered by the Defendant
26 Insurance Producers and by paying premiums, a percentage of which was paid to each
27 respective Defendant Retail Insurance Producer and Defendant Wholesale Insurance Producer
28 as commissions.

78. The Defendant Retail Insurance Producers and Defendants Wholesale Insurance Producers breached their contracts to procure valid insurance with each corresponding Employers Mutual Plan by failing to procure the insurance issued by an A-rated carrier as promised.

79. As a proximate result of the breaches by the Defendant Retail Insurance Producers, and Defendant Wholesale Insurance Producers, the plaintiff has been damaged in the amount of approximately \$50,000,000 in unpaid or unreimbursed medical expenses and prescription drug expenses and over \$15,000,000 in wasted premiums. Additional damage caused by this breach is the amount paid by Plaintiff to adjudicate the unpaid claims, which amount will be proven at the time of trial.

X

FIFTH CLAIM FOR RELIEF

Professional Malpractice Against the Defendant

Wholesale Insurance Producers and Retail Insurance Producers

80. Plaintiff refers to and incorporates by reference each allegation contained in Paragraphs 1 through 79 of the Complaint as though fully set forth herein.

81. In performing professional services for a client, a wholesale insurance producer and a retail insurance producer has the duty to have that degree of learning and skill ordinarily possessed by reputable insurance producers practicing in the same or a similar locality and under similar circumstances, and to use reasonable diligence and best judgment in the exercise of professional skill and in the application of learning, in an effort to accomplish the purpose for which the professional was employed.

82. In performing professional services for their respective clients, the Defendant Wholesale Insurance Producers and the 400 Defendant Retail Insurance Producers, and each of them, breached their duty to use the care and skill ordinarily used by reputable insurance producers, all to the detriment of the 7,000+ EWBP's represented by Dillon, in the following particulars:

///

1 (a) They failed to confirm with Sun Life, United Wisconsin, Golden Rule
2 and/or First Continental that the RICO Defendants and/or Employers Mutual LLC were
3 authorized to bind coverage for the 7,000+ Employers Mutual Plans;

4 (b) They failed to confirm with Sun Life, United Wisconsin, Golden Rule
5 and/or First Continental that said carriers had, in fact, agreed to provide health insurance
6 coverage to the 30,000 participants of the 7,000+ Employers Mutual Plans;

7 (c) They failed to identify the generic A- rated insurer that the RICO
8 Defendants represented was insuring their clients, and then failed to contact that alleged
9 generic A- rated company to confirm that it had, in fact, agreed to provide health insurance
10 coverage to the 30,000 participants of the 7,000+ Employers Mutual Plans;

11 (d) They failed to investigate Employers Mutual LLC and Graf's 16 Nevada
12 Associations to determine the propriety of the insurance program offered by the RICO
13 Defendants;

14 (e) They failed to obtain the insurance from a licensed company as
15 promised, and instead sold the 7,000+ EWBP's non-existent insurance;

16 (f) They failed to notify the 7,000+ Employers Mutual Plans that Employers
17 Mutual LLC was a fraud and failed to move their clients into legitimate replacement programs
18 once they discovered it was a fraud or once they should have discovered it was a fraud, which
19 was immediately upon inception of the policy and certainly no later than August 14, 2001
20 when the Florida Department of Insurance issued its Order to Cease & Desist.

21 83. Said professional malpractice was a cause of the plaintiff's damages in the
22 approximate amount of \$50,000,000 in unpaid or unreimbursed medical expenses and
23 prescription drug expenses and wasted premiums in the amount of over \$15,000,000, the
24 exact amount to be proven at trial. Additional damage caused by the malpractice is the cost
25 incurred by Dillon to adjudicate the claims and attorneys fees incurred in the prosecution of
26 this action, the exact amount to be proven at trial.

27 ///

28 ///

XI

SIXTH CLAIM FOR RELIEF

**Breach of Warranty of Authority Against RICO Defendants, Defendants
Wholesale Insurance Producers and Defendant Retail Insurance Producers**

84. Plaintiff refers to and incorporates by reference each allegation contained in Paragraphs 1 through 83 of the Complaint as though fully set forth herein.

85. When an agent acts without authority or in excess of his authority granted by the principal, he or she is liable for breach of an implied warranty that the agent is authorized to speak on behalf of and bind the principal. The detriment caused by the breach of the warranty of authority of an agent is deemed to be the amount that could have been recovered from the principal on the contract if the warranty had been complied with, together with reasonable expenses of legal proceedings taken in good faith to enforce the promised obligation of the alleged principal against the agent.

86. The RICO Defendants, Defendant Wholesale Insurance Producers and Defendant Retail Insurance Producers expressly and impliedly warranted to the 7,000+ EWBPs that they were authorized and could bind coverage for the 7,000+ Employers Mutual Plans and their participants with Sun Life, United Wisconsin, Golden Rule, First Continental and/or some generic A-Rated carrier. These alleged principals did not authorize the defendants to bind such coverage, and the defendants, and each of them, breached their warranties of authority by representing to the 7,000+ EWBPs that such coverage had in fact been bound.

87. As the actual and proximate cause of the breach of the warranty of authority by each defendant, the plaintiff has been damaged as follows:

(a) The 7,000+ Employers Mutual Plans identified herein have suffered damage by the payment of premiums for non-existent insurance in an amount exceeding \$15,000,000; and

(b) The 7,000+ Employers Mutual Plans referred to herein have suffered damage by the occurrence of approximately \$50,000,000 in claims payable to their employees under their respective promised insurance policies which claims have not been

1 paid and would have been paid had the 7,000+ EWBP's bought alternative and legitimate
 2 insurance or had the defendants been authorized to bind coverage with the A-rated carriers
 3 as promised.

4 (c) Plaintiff has been compelled to file the subject litigation in good faith and
 5 will incur costs and expenses to recover the amount that would have been paid by the
 6 principal carriers had defendants been authorized to bind coverage as alleged. Plaintiff has
 7 also been compelled to expend funds for claims administration which adjudication process
 8 would have been paid for by the A-rated carriers had they in fact bound coverage, as
 9 promised.

10 XII

11 PRAYER FOR RELIEF

12 WHEREFORE, plaintiff Dillon, on behalf of the 7,000+ Employers Mutual Plans, prays for
 13 judgment against all defendants, as follows:

14 A. As to the RICO Claims

- 15 1. For damages arising from the injury to plaintiff's property from the predicate acts
- 16 and the operation of the enterprise;
- 17 2. For treble damages; and
- 18 3. For attorneys fees.

19 B. As to All Other Applicable Claims For Relief

- 20 1. For unpaid or unreimbursed claims of approximately \$50,000,000 payable
- 21 pursuant to the respective promised insurance policies or if unpaid claims do not exceed
- 22 wasted premiums;
- 23 2. For wasted premiums of over \$15,000,000;
- 24 3. For pre-judgment interest on all claims to which plaintiff is entitled;
- 25 4. For costs of this action including reasonable attorneys fees as afforded by any
- 26 applicable law and the costs of claims administration;
- 27 5. For punitive damages, if applicable;

28 ///

- 1 6. For the fees of the Independent Fiduciary as permitted pursuant to local Rule 54-8;
2 and
3 7. For all such other relief as the court deems proper.

4
5 DATED: February 28, 2003

HOLLISTER & BRACE

6
7 By: 

ROBERT L. BRACE

8
9 DATED: March 3, 2003

LIONEL SAWYER & COLLINS

10
11 By: 

RICHARD W. HORTON

12 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff demands a trial by jury on all issues so triable as a matter of right in this action.

DATED: February 28, 2003

HOLLISTER & BRACE

By: 

ROBERT L. BRACE

DATED: ~~February~~ March 3, 2003

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